



February 4, 2020

Via Email and Hand Delivery

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Legal Affairs and Criminal Investigations Division
Office of the Secretary
Louisiana Department of Environmental Quality
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Baton Rouge, Louisiana 70802
DEQ.Reg.Dev.Comments@la.gov

2020 FEB -4 PM 12:45

RE: Comments of the Louisiana Chemical Association on
Water Quality Standards Triennial Revision
(LAC 33:IX.Chapter 11)
Log No. WQ097

Dear Ms. Johnson:

As you know, a public hearing was held on January 28, 2020, regarding the proposed Water Quality Standards Triennial Revision (LAC 33:IX.Chapter 11) (Log No. WQ097) (the "Triennial Revision Rules"). Further, as you know, the written comment period in connection with such proposed rules ends at 4:30 p.m. on Tuesday, February 4, 2020.

Set forth below are the written comments of the Louisiana Chemical Association ("LCA") to the Louisiana Department of Environmental Quality ("LDEQ" or "Department") for inclusion in the administrative record of proceedings in connection with the above-referenced Triennial Revision Rules (Log No. WQ097).

LCA requests that (a) all oral comments provided at the public hearing on the Triennial Revision Rules and (b) all written comments provided in connection with the Triennial Revision Rules (including LCA's comments herein) be incorporated in the administrative record for the Triennial Revision Rules. Pursuant to La. R.S. 49:953(A)(2)(b), LCA requests that LDEQ issue a concise statement of the principal reasons for and against the adoption of any modifications or changes suggested in written or oral comments made to LDEQ in connection with the Triennial Revision Rules, Log No. WQ097.

LCA also requests that, prior to any legislative oversight hearings, LDEQ provide to LCA a complete draft of proposed technical changes to the Triennial Revision Rules.

LCA's comments on the Triennial Revision Rules follow:

LCA COMMENTS ON TRIENNIAL REVISION RULES¹

Introduction.

LCA is a nonprofit Louisiana corporation, composed of 63 members with over 100 chemical manufacturing plant sites in Louisiana. A number of LCA member companies have point source discharges permitted by the Department under the Louisiana Pollutant Discharge Elimination System (“LPDES”) program and will be directly affected by the Triennial Revision Rules.

1. General -- Incorporation of Other Comments.

LCA hereby adopts and incorporates by reference those comments on the Triennial Revision Rules made by the Louisiana Mid-Continent Oil & Gas Association (“LMOGA”), members of LCA, and members of LMOGA, to the extent that such comments are not inconsistent with the comments made herein by LCA.

2. General -- Support for Triennial Revision Rules.

LCA generally supports the Triennial Revision Rules. The triennial review process for Louisiana’s water quality standards, as mandated by the Clean Water Act,² is necessary to ensure that the designated uses of Louisiana’s surface water bodies are appropriate and attainable. LCA recognizes and appreciates the Department’s efforts in reviewing and updating Louisiana’s water quality standards.

3. LAC 33:IX.1105 -- definition of “pollutant minimization program.”

LCA submits that to be consistent with the definition in the corresponding federal regulation, 40 CFR 131.3, the definition of “pollutant minimization program” in proposed LAC 33:IX.1105 should be revised to read as follows:

Pollutant Minimization Program—a structured set of activities to improve processes and pollutant controls that **will** prevent and reduce pollutant loadings in the context of LAC 33:IX.1109.E.

4. LAC 33:IX.1109.C.

LCA submits that to be more consistent with the corresponding federal regulation, 40 CFR 131.10(j) and not require use attainability analyses where more stringent criteria are being applied, the first paragraph of proposed LAC 33:IX.1109.C should be revised to read as follows:

¹ In these comments, LCA has attempted to blackline all of its proposed changes to the draft proposed rules (double underline reflects additions, and ~~strikeout~~ reflects deletions). LCA has also highlighted the changes in **yellow**.

² 33 U.S.C. 1313(c).

C. Water Body Exception Classification. Some water bodies may qualify for a water body exception classification. This classification will be made on a case-by-case basis. Whenever data indicate that a water body exception classification is warranted, the department will recommend the exception to the administrative authority for approval. In all cases where exceptions are proposed, the concurrence of EPA must be obtained and the opportunity for public participation must be provided during the exceptions review process. The general criteria of these standards shall apply to all water bodies classified as a water body exception except where a particular water body is specifically exempted. A use attainability analysis shall be conducted to justify a water body exception classification if an accompanying downgrade of a 101(a)(2) use or revision of application of less stringent criteria is being proposed. Exceptions are allowed for the following three classifications of water bodies.

5. LAC 33:IX.1109.C.3.a.

LCA submits that in the first sentence of proposed LAC 33:IX.1109.C.3.a, the Department provides a more restrictive definition of “naturally dystrophic waters” than the definition provided in LAC 33:IX.1105; i.e., “waters which are stained with organic material and which are low in dissolved oxygen because of natural conditions.” The Department should modify the first sentence of LAC 33:IX.1109.C.3.a or the definition of “naturally dystrophic waters” in LAC 33:IX.1105 so that they are mutually consistent.

6. LAC 33:IX.1109.C.3.d.

LCA submits that a use attainability analysis should not be required before the Department permits *any new discharge* to a naturally dystrophic water. Given the sheer volume of naturally dystrophic waters within the state and the fact that not all new discharges will cause or exacerbate dissolved oxygen issues, the Department would be overwhelmed with unnecessary use attainability analyses. Moreover, the Department sufficiently addresses new discharges to naturally dystrophic waters in proposed LAC 33:IX.1109.3.c and those provisions in proposed LAC 33:IX.1109.3.d applicable to wetlands. LCA thus submits that the first sentence in the first paragraph of proposed LAC 33:IX.1109.C.3.d should be deleted. Failing that, it should be revised to read as follows:

d. Any use attainability analysis for a proposed naturally dystrophic water body classification shall provide information sufficient for the department to determine natural background conditions and identify those proposed new or modified discharges that warrant specific evaluation under Clause C.3.c of this Subsection. ~~Natural background conditions and proposed significant changes will be determined through use attainability analyses prior to the addition of any discharge.~~ A wastewater discharge may be proposed for an approved, designated

naturally dystrophic water body in a wetland only if the discharge will not by itself, or in conjunction with other discharges:

7. LAC 33:IX.1109.E.1.

LCA submits that the first paragraph of proposed LAC 33:IX.1109.E.1 should be revised to read as follows:

1. The state may adopt a *WQS variance*, as defined in Section 1105 of this Chapter. The WQS variance is subject to the provisions of this Subsection and public participation requirements at 40 CFR 131.20(b). A WQS variance shall comply with the requirements of 40 CFR 131.14 and is a water quality standard subject to EPA review and approval, or disapproval under section 303(c) of the Clean Water Act.

8. LAC 33:IX.1109.E.1.a.iii.

LCA submits that to be consistent with the corresponding federal regulation, 40 CFR 131.14(a)(3), proposed LAC 33:IX.1109.E.3.1.a.iii should be changed to read as follows:

iii. Once the WQS variance is adopted by the state and approved by EPA, it shall be the applicable standard for purposes of the Clean Water Act under 40 CFR 131.21(d)-(e), for the following limited purposes. The approved WQS variance applies for the purposes of developing LPDES permit limits and requirements under federal regulations, where appropriate, consistent with Clause E.1.a.i of this Subsection. The department also may use the approved WQS variance when issuing certifications under LAC 33:IX.Chapter 15.

9. LAC 33:IX.1113 Table 1, Footnote 6.

40 CFR 136.3 does not refer to Total PCBs or use the word “Aroclors,” although it does reference the seven Aroclors by “PCB-[number].” LCA submits that Footnote 6 in Table 1 of LAC 33:IX.1113 should be revised to read as follows:

⁶ Total refers to the sum of the Aroclors as stated in 40 CFR 136.3. Aroclor-1016 (CAS 12674-11-2), Aroclor-1221 (CAS 11104-28-2), Aroclor-1232 (CAS 11141-16-5), Aroclor-1242 (CAS 53469-21-9), Aroclor-1248 (CAS 12672-29-6), Aroclor-1254 (CAS 11097-69-1), and Aroclor-1260 (CAS 11096-82-5).

10. LAC 33:IX.1113 Table 1, Footnote 7.

LCA suggests that the Department revise Footnote 7 in Table 1 of LAC 33:IX.1113 to include the CAS registry number for Endosulfan α (which is 959-98-8) and Endulfan β (which is 33213-65-9).

11. LAC 33:IX.1113 Table 1A.

LCA suggests that the Department add a footnote to "Mercury" in Table 1A of LAC 33:IX.1113 which would read as follows:

^{FN} Freshwater and saltwater mercury criteria are expressed in terms of the dissolved metal in the water column. Except as otherwise indicated, the standard was calculated by multiplying the previous water quality criteria by a conversion factor.

12. LAC 33:IX.1123 Table 3.

Did the Department intend to add drinking water supply to the designated uses for water quality subsegment 060702 -- Lake Fausse Point and Dauterive Lake? If so, why?

Did the Department intend to delete water quality subsegment 090207-5112 -- Morgan Bayou -- from headwaters near I-10 to Middle River? If so, why?

Did the Department intend to delete water quality subsegment 100903 -- Bayou Nantaches -- From Nantaches Lake to Red River? If so, why?


What is the basis for the Department's addition of water quality subsegment 1015907 -- Old Saline Bayou -- From headwaters to control structure of Saline Bayou?

LCA welcomes further review and dialogue with LDEQ personnel in light of the significant impact the proposed regulations may have on industry. Should you have any questions regarding the written comments of LCA, please do not hesitate to contact me at 225.376-7672 or tokesha@lca.org.

Thank you for your assistance and cooperation.

Very truly yours,

LOUISIANA CHEMICAL ASSOCIATION



Tokesha Collins-Wright, Vice-President
Environmental Affairs and General Counsel